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Supreme Court of the United States

OCTOBER TERM, 1953

No. 513

UNITED RAILROAD OPERATING CRAFTS, a Labor Organization; A. W. LEE, C. C. ANDERSON and O. J. KOEFGAARD, Individually and on Behalf of All Members of the Plaintiff Railroad Organization as a Class Who Are Too Numerous to Be Made Parties,

Petitioners,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, and BROTHERHOOD OF RAILROAD TRAINMEN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF

CLIFFORD HOOD,
Counsel for Petitioners.
GERALD D. HILE,
GERALD SHUCKLIN,
Of Counsel for Petitioners.

Office and Post Office Address:
533 Dexter Horton Building,
Seattle 4, Washington.

THE ARGUS PRESS, SEATTLE

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UNITED RAILROAD OPERATING CRAFTS, a Labor Organization; A. W. LEE, C. C. ANDERSON and O. J. KORTGAARD, Individually and on Behalf of All Members of the Plaintiff Railroad Organization as a Class Who Are Too Numerous to Be Made Parties, *Petitioners,*	No. .....
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable, The Supreme Court of the United States:

Your Petitioner respectfully shows:

SUMMARY OF THE MATTER INVOLVED

Your petitioner, the United Railroad Operating Crafts, a railway labor organization, A. W. Lee, C. C. Anderson, O. J. Kortgaard, members of the United Railroad Operating Crafts, individually and on behalf of all members of the petitioning organization as a class, who are too nuemerous to be made parties of the action, seek to review the judgment of the United

States Court of Appeals for the Ninth Circuit entered on November 6, 1953, which remanded the petitioners' action to the United States District Court for the Western District of Washington with directions to dismiss petitioners' cause of action (R. 105), for want of jurisdiction.

Petitioners commenced their action in the District Court of the United States vs. the Northern Pacific Railway Company, Respondent, in which action the Brotherhood of Railroad Trainmen was allowed to intervene by the District Court. Jurisdiction of the District Court was claimed by virtue of diversity of citizenship (Title 28, U.S.C., §1332) and by virtue of Title 28, U.S.C., §1337, conferring original jurisdiction on the court of any civil action or proceeding arising out of any act of Congress regulating commerce * * * (R. 3, 4). The individual petitioners, members of the United Railroad Operating Crafts are employees of the Northern Pacific Railway Company, a carrier engaged in interstate commerce and a Wisconsin corporation (R. 4, 5). Prior to January 10, 1951, the Railway Labor Act (Section 151 U.S.C., *et seq.*) and particularly Sections 151a and 152, fourth and fifth gave complete freedom to employees of railroads to organize and bargain collectively through representatives of their own choosing and complete freedom to join or not to join a labor organization of their own choosing. As of January 10, 1951, the so-called "Union Shop Amendment" of the Railway Labor Act (Title 45, U.S.C., §152 eleventh) became effective, which provided, in substance, that a carrier and a collective bargaining agent be permitted to enter into agreements requiring as a

condition of continued employment (italics ours) that employees of the crafts and classes represented become members of the collective bargaining agent within sixty (60) days from the beginning of such employment or the effective date of such agreement, which ever be later, with the further proviso (152 U.S.C., eleventh (c)) that the requirement of membership in the collective bargaining agent be satisfied if the employee holds or acquires membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act admitting to membership employees engaged in train and yard services.

Respondent, Brotherhood of Railroad Trainmen, is the collective bargaining agent for such services on respondent carrier and individual petitioners are engaged in such services, and petitioner, United Railroad Operating Crafts, admits to membership employees in such service. Effective as of September 1, 1951, respondent carrier and respondent, Brotherhood of Railroad Trainmen amended their collective bargaining agreement (R. 5) and in accordance with the provisions of said agreement (R. 12), provided in substantially statutory language, the provisions of Title 45, U.S.C., §152 eleventh. Pursuant to the agreement (R. 12 at R. 15), the respondent, Brotherhood of Railroad Trainmen, caused hearings to be held relative to the union membership of the individual petitioners and thereafter pursuant to the decision of the Chief of Personnel of the Northern Pacific Railway Company (R. 24, 25, 26) individual petitioners received notice of discharge upon the grounds that * * * "Membership in

the United Railroad Operating Crafts does not satisfy the requirements of that agreement. Accordingly, your employment as yardman at Seattle yard will be terminated in accordance with the provisions of said agreement effective January 15, 1953 /s/ T. J. Kane."

As a result of the notice of discharge this action was brought in the United States District Court for the Western District of Washington (R. 3) by way of preliminary injunction to reinstate the individual petitioners, prevent further discharges of members of petitioner labor organization, for permanent similar relief and for damages (R. 3-R. 11) and as stated in Paragraph VII of Plaintiff's Complaint (R. 7) "The sole question involved in this litigation is whether or not the members of the plaintiff labor organization are, in view of the provisions of the National Railway Labor Act and particularly Title 45, U.S.C., §152 eleventh, entitled to employment with the defendant carrier while maintaining their membership solely in the plaintiff labor organization (R. 7). A preliminary injunction was granted.

After issues being joined by the filing of Answers on behalf of the respondent, Northern Pacific Railway Company (R. 59), and the Brotherhood of Railroad Trainmen (R. 57), which admitted jurisdiction by reason of diversity of citizenship, motion was made by the Brotherhood of Railroad Trainmen (R. 62), which, in substance, claimed lack of jurisdiction of the action in the District Court maintaining that the jurisdiction of the Railroad Adjustment Board over the controversy was exclusive, among other things (R. 62). As a result

of the second Motion to Dismiss, after issues being joined, an Order and Decree was entered by the trial court (R. 65) which provided, in substance, that the Temporary Injunction then in effect be maintained; that the petitioners present their claims to the Railroad Adjustment Board within thirty days or suffer penalty of dismissal of their action; that the Motion to Dismiss for Want of Jurisdiction be denied and that jurisdiction of the trial court be retained pending the decision of the Railroad Adjustment Board for such rulings and procedures that might be appropriate in light of the rulings made by the Board. From the portion of the Order and Decree adverse to petitioners, *i.e.*, requiring and prosecution of claims before the Adjustment Board, or in the alternative, have petitioners' cause of action dismissed, petitioners appealed to the United States Court of Appeals for the Ninth Circuit. The court, on November 6, 1953, entered its opinion and judgment (R. 99 and R. 105) directing the dismissal of petitioners' cause for action for want of jurisdiction upon the basis that sole jurisdiction lay in the Adjustment Board.

JURISDICTION

Jurisdiction of this court is invoked under Title 28, U.S.C. Sec. 1254 (1) (62 Stat. 928).

QUESTIONS PRESENTED

1. Does the incorporation of a Federal Statute granting an absolute right to a class, when incorporated in a collective bargaining agreement, make such statute subject to collective bargaining between an employer and the collective bargaining agent for employees?

2. Does an agreement between a carrier and a collective bargaining agent, incorporating the language of the statute (45 U.S.C. 152 eleventh) and particularly the words "national in scope" remove from the courts statutory interpretation and transfer such right of interpretation to a non-judicial, non-governmental agency, *i.e.*, the Railroad Adjustment Board?

3. Has the Congress delegated to the Railroad Adjustment Board the exclusive right to determine the meaning of the words "national in scope" in the 1951 amendment to the Railway Labor Act (45 U.S.C. 152 eleventh)?

4. Where the collective bargaining agent seeks the discharge of carrier employees for violation of the collective bargaining agreement in not being members of the collective bargaining agent, and pursuant thereto, the carrier makes a determination that such employees should be discharged upon the grounds that their membership in the petitioner union does not satisfy the agreement, is the ultimate question whether or not the United Railroad Operating Crafts is a union "national in scope" within the meaning of 45 U.S.C. 152 eleventh (c), where the statute must be interpreted, made a matter of interpretation of a collective bargaining agreement within the exclusive jurisdiction of the National Railroad Adjustment Board, or are the courts the forum to determine the meaning of the statute?

5. Is the National Railroad Adjustment Board the exclusive agency to make a final determination of the meaning of 45 U.S.C. 152 eleventh (a) and (c) and particularly the words "national in scope" where the Con-

gress has not specified any criteria by way of definition and no specific delegation has been made to the Adjustment Board?

6. Is not the National Railroad Adjustment Board, whose members are selected exclusively by railroads and by railway labor organizations and who are paid exclusively by the respective organizations they represent, essentially a private body or agency and as such constitutionally incapable of receiving a delegation of lagislative or judicial power?

REASONS FOR THE ALLOWANCE OF THE WRIT

The reasons relied upon by petitioner for allowance of the Writ are as follows:

1. A fundamental question is presented as to whether or not the interpretation of a Federal statute is a matter for court decision or if the interpretation and meaning of a Federal statute can be determined finally by an agency (The National Railroad Adjustment Board) which is neither judicial, quasi-judicial nor governmental.

2. In the opinion of the petitioner the meaning of the statute involved (45 U.S.C. §152 eleventh) should be determined by the courts, particularly in view of the fact that the jurisdiction of the National Railroad Adjustment Board is a limited jurisdiction and its function is to interpret collective bargaining agreements, *Elgin, Joliet & Eastern R. Co. v. Burley,* 325 U.S. 711, 89 L.ed. 1886.

3. The fact that the provisions of a statute (45 U.S.C. 152 eleventh (a), (c)) are included in a collective bar-

gaining agreement do not convert the statute and particularly (c) thereof to a matter subject to collective bargaining to the end that a positive right granted by the statute may be dissipated by the parties to the agreement, in interpretation, to the detriment of a minority not parties to the collective bargaining agreement.

4. Under the Railway Labor Act, 45 U.S.C. 151a, the purposes of the Act reflect that employees shall be free in the matter of self organization, and association and that there shall be no limitation upon freedom of association or any denial as a condition of employment of the right of employees to join a labor organization. The Act, 45 U.S.C. §152 fourth and fifth, carries out the intent. The only limitation being the 1951 amendment (45 U.S.C. §152 eleventh) providing for so-called "Union Shop Agreement" which in (a) permits the entering into of Union Shop Agreements and in (c) exempts employees from belonging to the collective bargaining agent if they belong to a labor organization "national in scope" organized in accordance with the Act. Clearly, the statute confers positive rights to what might properly be termed a minority, i.e., employees who do not belong to the collective bargaining agent, but who belong to another labor organization. If the courts do not have jurisdiction to interpret the statute a "freeze" will occur to the end that no new railroad union may exist since carrier employees who exercise their rights to organize have no adequate administrative remedy via the Adjustment Board, it being composed of carrier representatives paid by the carriers and union members appointed by the so called "standard" unions and paid by them; this is demonstrated by

the case of Milton Hanson in which the parties to dispute before the National Railroad Adjustment Board, First Division, were Brotherhood of Locomotive Firemen and Enginemen and the Chicago, Burlington & Quincy Railroad Co., Award No. 16 475, Docket No. 30 074, attached hereto as "Appendix A."

5. The matters presented in this case are novel since to the petitioners' knowledge no decision of this court has ever been rendered regarding the 1951 amendment to the Railway Labor Act (45 U.S.C. §152 eleventh) although there have been a number of District Court cases which are in disagreement as to jurisdiction as between the courts and the Adjustment Board and the petitioners are advised that a Petition for a Writ of Certiorari has been filed in this court by the *United Railroad Operating Crafts, et. al. v. William Wyer, as Trustee, et. al.,* involving substantially the same questions as are involved in this action. This case (*Wyer*) is from the United States Court of Appeals for the Second Circuit and we are advised that the Second Circuit held that the courts are without jurisdiction.

WHEREFORE, your petitioners pray that a Writ of Certiorari issue from this court directed to the United States Court of Appeals for the 9th Circuit to the end that the opinion and judgment of the United States Court of Appeals for the 9th Circuit holding that the petitioners' cause of action in the United States District Court for the Western District of Washington should be dismissed for want of jurisdiction and that the matters complained of by the petitioners should be determined exclusively under the Railway Labor Act,

may be reviewed and determined by this court and that the judgment below remanding petitioners' cause of action to the District Court with directions to dismiss be reversed by this court and that the petitioners have such other and further relief as this court may deem proper.

DATED this 24th day of December, 1953.

Respectfully submitted,

CLIFFORD HOOF,
Counsel for Petitioners.

GERALD D. HILE,
GERALD SHUCKLIN,
Of Counsel for Petitioners.

CERTIFICATION OF COUNSEL

I, CLIFFORD HOOF, counsel for petitioners herein, do hereby certify that the within and foregoing Petition is in my opinion well founded and the same is not interposed for delay.

CLIFFORD HOOF,
Counsel for Petitioners.

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OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the 9th Circuit is Cause No. 13,539 before that court and is not yet found in the official reports. The opinion is set forth in full, however, at (R. 99-104, inclusive). The Interlocutory Order of the United States District Court for the Western District of Washington, from which an appeal was taken by the petitioners to the United States Court of Appeals from those portions of the order adverse to petitioners and from which an appeal was taken to the United States Court of Appeals by respondent, Brotherhood of Railroad Trainmen, from those portions of the Order adverse to it is unreported, however, the Order is set forth at length at (R. 65-67, inclusive).

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JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Ninth Circuit was rendered November 6, 1953. No petition for rehearing was made. The statutory provision sustaining the jurisdiction of this court is Title 28, U.S.C. §1254 (1).

STATEMENT OF CASE

Your petitioners, A.W. Lee, C. C. Anderson and O. J. Kortgaard, are residents of the State of Washington and employees of respondent, Northern Pacific Railway Company, a Wisconsin corporation, engaged in interstate commerce, and engaged in such commerce in the State of Washington, maintaining therein tracks and other railroad facilities. Petitioner, United Railroad Operating Crafts, is a labor organization contended to be "national in scope" and organized in accordance with the Railway Labor Act. Individual petitioners are members of petitioner, United Railroad Operating Crafts. The action herein brought by the petitioners in the District Court for the Western District of Washington, Northern Division, as a class action, was for the purpose of reinstatement of their employment with respondent, Northern Pacific Railway Company, and to enjoin the discharge of further members of petitioner labor organization from respondent, Northern Pacific Railway Company, solely because of union membership, they having been discharged by reason of the fact that they did not belong to the collective bargaining agent for the crafts and classes involved, namely, the intervenor respondent, Brotherhood of Railroad Trainmen. It was, and is contended by the petitioners

that membership in the petitioner, United Railroad Operating Crafts, satisfies the requirements of the Union Shop Amendment of the Railway Labor Act (45 U.S.C. §152 eleventh) wherein a carrier and a collective bargaining agent may enter into an agreement requiring carrier employees to become members of the collective bargaining agent, but with the proviso that membership in the collective bargaining agreement is not required if such employees belong to a labor organization "national in scope" organized in accordance with the Railway Labor Act. As is shown by the petition herein, the District Court held upon Motion to Dismiss For Want of Jurisdiction, that jurisdiction of this cause was in the District Court, but that petitioners should present their claims to the National Railroad Adjustment Board and jurisdiction of the cause was retained for such other and further rulings as might be proper in light of the action of the Railroad Adjustment Board. The United States Court of Appeals for the Ninth Circuit reversed the Order of the United States District Court with directions to dismiss the action of the petitioners for want of jurisdiction. A more detailed summary of facts is set out in the preceding petition which is hereby adopted and made a part of this brief.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the Ninth Circuit erred in holding that the District Court was without jurisdiction to entertain petitioners' complaint.

The court erred in holding that the matters con-

tained in petitioners' complaint in the district Court constituted a dispute which the Congress provided should be determined exclusively under the Railway Labor Act.

The court further erred in holding that the Railroad Adjustment Board had jurisdiction to interpret the meaning of "a labor organization national in scope" (45 U.S.C. §152 eleventh (c)).

The court further erred in remanding petitioners' cause of action to the District Court with directions to dismiss the cause for lack of jurisdiction.

ARGUMENT

I

Analysis of the Applicable Statutes

Prior to January 10, 1951, the Railway Labor Act (Title 45, U.S.C. §151, *et seq.*) provided:

The intent of the Act (45 U.S.C. §151a) was (2) to forbit any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization and (3) to provide for the complete independence of carriers and of employees in the matter of self organization to carry out the purposes of the Act.

The next section, 45 U.S.C. §152 (fourth), gave the right to employees to organize and bargain collectively through representatives of their own choosing, granting to the majority of any craft or class of employees, the right to determine who should be the representative for collective bargaining.

The 1951 amendment known as the "Union Shop Amendment" (45 U.S.C. §152 eleventh) provides that employers and the collective bargaining agent may (a) make agreement requiring as a *condition of continued employment* that within sixty days from the beginning of such employment or the effective date of such agreement, whichever is the later, employees represented by the collective bargaining agent are required to become members of the collective bargaining agent with the condition in eleventh (c):

> "The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of subsection (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; * * * "

It is of particular note that eleventh (d) provides as follows:

> "Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended."

Having in mind, therefore, that the Act intended and intends to give complete freedom to organize and to bargain collectively and for employees to select a

collective bargaining agent of their own choosing, the 1951 amendment made but one limitation, that being that as a condition of continued employment, an employee in the crafts or classes represented must belong to the collective bargaining agent or a labor organization "national in scope."

The individual petitioners as well as the other members of their local organization and nine other locals on the Northern Pacific System are directly affected by this action. Indirectly affected are the members of the petitioner, United Railroad Operating Crafts (including the employees of the respondent, North Pacific Railway Company) in approximately two hundred locals of the organization employed on approximately sixty railroads in the United States and in approximately thirty-six states of the United States.

The collective bargaining agent respondent, Brotherhood of Railroad Trainmen, sought the discharge of individual petitioners upon the grounds that they did not belong to respondent, Brotherhood of Railroad Trainmen. Respondent, Northern Pacific Railway Company, concurred, determining that United States Railroad Operating Crafts did not satisfy the requirement of the collective bargaining agreement. By reason of injunction in effect, the Northern Pacific Railway Company has been restrained from discharging employees who are members of United Railroad Operating Crafts where the matter of union membership only is involved.

II.

Jurisdiction of the National Railroad Adjustment Board

The Railroad Adjustment Board was created pursuant to the provisions of Title 45, U.S.C. §153, *et seq.*, section 153 (h) providing for the Board to be composed of four Divisions independent of each other. The First Division to have jurisdiction over what is generally known as the operating crafts, i.e., train and yard employees and as assigned to it under (i) of the same section the following:

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The composition of the Adjustment Board pursuant to (45 U.S.C. Section 153) is divided equally between carrier representatives and union representatives who by the provisions of (g) respectively paid by the party or parties they represent.

The Adjustment Board is not a judicial or quasi-judicial body, *Watson v. Missouri, Kansas & Texas R. Co.*, 173 S.W.(2d) 357, and it is not a "governmental

agency" *Dahlberg v. Pittsburgh & L. & E.*, 138 F.(2d) 121.

The jurisdiction of the Adjustment Board has to do with the interpretation of collective bargaining agreements *Elgin, Joliet & Eastern R. Co. v. Burley*, 325 U.S. 711, 89 L.ed. 1886, and is limited to disputes over interpretation or application of contracts between carriers and other employees, *Southern Pac. Co. v. Joint Council Dining Car Emp., Locals 456 and 582* (C.C.A., Cal. 1947) 165 F.(2d) 26, Cert. denied 68 S.Ct. 608, 333 U.S. 838, 92 L.ed. 1122.

III.

The Court and Not the Adjustment Board Should Determine the Questions Involved in This Action

As was stated in petitioners' complaint in the District Court (R. 7) the sole question involved in this litigation is whether or not the members of petitioner labor organization are, in view of the provisions of the Railway Labor Act and particularly Title 45, U.S.C., Section 152 eleventh, entitled to employment with the respondent carrier while maintaining their membership solely in petitioner labor organization.

The further question presents itself as to whether jurisdiction to so determine is in the Adjustment Board or in the Courts.

The petitioners respectfully contended that by virtue of the provisions of Title 45, U.S.C. 152 eleventh, they have been granted a statutory right to belong to a union other than the collective bargaining agent, Bro-

therhood of Railroad Trainmen. The incorporation of the statute in the "Union Shop Agreements" (R. 12 (2) and R. 13 (3)) does not make the statute a matter of collective bargaining and rights or duties or imposed by statute cannot be bargained away by private parties, *West Coast Hotel Co. v. Parrish,* 300 U.S. 379, *Fleming v. Warshawsky & Co.,* 123 F.(2d) 662.

It is likewise settled law that "to declare what the law is or has been is a judicial power; * * * ." 50 Am. Jur. Stat., Sec. 219 and the construction of a statute is a judicial function, *P. H. Mallen Co. v. Dept. of Finance,* 25 N.E.(2d) 43.

IV.

The Opinion of the United States Court of Appeals

The United States Court of Appeals in its opinion (R. 99) based its decision that the instant case was one for the Adjustment Board upon *Hayes v. Union Pacific Ry.,* 184 F.(2d) 337 and *Colbert v. Brotherhood of Railroad Trainmen,* 206 F.(2d) 9. We are advised that the *Colbert* case, *supra,* is at the present time on a Petition for Writ of Certiorari to this court. Insofar as the *Hayes* case, *supra,* is concerned the fourth Circuit in *Dillard v. Chesapeake & Ohio Ry. Co.,* 199 F.(2d) 948, stated that the doctrine of the *Hayes* case was in clear conflict with the later decision of this court in *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768. In neither case, as we read the opinion, (the *Hayes* case or the *Colbert* case) was the interpretation of the statute involved insofar as it concerns the jurisdiction of the court or of the Adjustment Board, under the provisions of 45 U.S.C. Section 152 eleventh.

The Court of Appeals likewise concluded that the grievance constituted a dispute which the Congress provided should be determined exclusively under the Railway Labor Act referring to *General Committee B.L.E. v. Missouri-K-T-R. R.*, 320 U.S. 323; *General Committee B. L. E. v. Southern Pac. Co.*, 320 U.S. 338; *Order of Railway Conductors of America v. Pitney*, 326 U.S. 561; *Slocum v. Delaware L. & W. R. Co.*, 339 U.S. 239.

Two of the cases, the *General Committee B. L. E. v. Southern Pacific Co.* and the *General Committee B. L. E. v. Missouri-K-T-R. R. Co.*, involved Mediation Board matters as to which of two unions was the proper collective bargaining agent and the other two cases, *Order of Railway Conductors of America v. Pitney* and *Slocum v. Delaware L. & W. R. Co.*, involved jurisdictional disputes between two unions, each having collective bargaining agreements, as to the work to be performed by the members of each union. We sincerely feel that the cases cited by the court below do not support its opinion and judgment.

CONCLUSION

In conclusion, we respectfully submit that an examination of the statutes involved clearly show that there has been no delegation of authority to the National Railway Adjustment Board to make a determination as to what unions meet the requirement of being "national in scope" as provided in the Union Shop Amendment of the Railway Labor Act, nor is an agency which is not judicial, quasi-judicial or governmental capable of receiving a delegation of legislative or judicial powers, *Dahlberg v. Pittsburgh & L. E. R. Co.* (C.A. 3d 1943) 138 F.(2d) 121, 122-23; *Watson v. Missouri-K-T-R. Co.* (Ct. Civ. App. Tex. 1943) 173 S.W.(2d) 357.

As was recognized in the opinion of the court below (R. 99) opposing petitioners were the intervenor respondent herein, Brotherhood of Railroad Trainmen and as *Amicus Curiae* the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen. On the First Division of the Adjustment Board are five carrier representatives and five representatives of the so called "standard" unions. Of the five union members, one is a representative of the Trainmen, one is a representative of the Engineers and one is a representative of the Firemen. An examination of the *Hanson* case, "Appendix A" shows that the primary reason the board sustained the dismissal of Fireman Hanson was that no tribunal of competent jurisdiction had determined the meaning of the words "national in scope" and the United Railroad Operating Crafts had failed to prove that a tribunal of competent jurisdiction had determined the meaning

of the words "national in scope." The petitioners, therefore, can predict the outcome of each and every case of a member of United Railroad Operating Crafts that may come before the board with certainty and it seems to us that this action falls definitely within the doctrine of *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 89 L.ed. 173, wherein the court said:

> "The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the Act * * * " (citing cases) "or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration * * * " (citing cases). "Nor are there differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board.
>
> "Section 3, First (i), which provides for reference to the Adjustment Board of 'disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements,' makes no reference to disputes between employees and their representatives. Even though the dispute between the railroad and the petitioner were to be heard by the Adjustment Board, that Board could not give the entire relief here sought. The Adjustment Board has consistently declined in more than 400 cases to entertain grievance complaints by individual members of a craft represented by a labor organization. 'The only way that an individual may prevail is by taking his case to the union and causing the union to carry it through to the Board.' Administrative Procedure in Government Agencies, S. Doc. No. 10, 77th Congress,

1st Sess. Pt. 4, p. 7. Whether or not judicial power might be exerted to require the Adjustment Board to consider individual grievances, as to which we express no opinion, we cannot say that there is an administrative remedy available to petitioner or that resort to such proceedings in order to secure a possible administrative remedy, which is withheld or denied, is prerequisite to relief in equity. Further, since Sec. 3, First (c) permits the national labor organizations chosen by the majority of the crafts to prescribe the rules under which the labor members of the Adjustment Board shall be selected' and to 'select such members and designate the division on which each member shall serve,'' the Negro firemen would be required to appear before a group which is in large part chosen by the respondents against whom their real complaint is made. In addition Sec. 3, Second provides that a carrier and a class or craft of employees, 'all acting through their representatives, selected in accordance with the provisions of this Act,' may agree to the establishment of a regional board of adjustment for the purpose of adjusting disputes of the type which may be brought before the Adjustment Board. In this way the carrier and the representative against whom the Negro firemen have complained have power to supersede entirely the Adjustment Board's procedure and to create a tribunal of their own selection to interpret and apply the agreements now complained of to which they are the only parties. We cannot say that a hearing, if available, before either of these tribunals would constitute an adequate administrative remedy. Cf. *Tumey v. Ohio,* 273 U.S. 510, 71 L.Ed. 749, 47 S. Ct. 437, 50 A.L.R. 1243. There is no administrative means by which the Negro fireman can secure sep-

arate representation for the purposes of collective bargaining * * *.

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of the right here asserted, to a remedy for a breach of the statutory duty of the bargaining representatives to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction." (Citing cases)

In the opinion of the petitioners the doctrine of the *Steele* case, *supra,* and the cases following it was extended by the case of *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768, as was recognized in *Dillard v. Chesapeake & Ohio Ry. Co.,* 199 F.(2d) 948. Under the *Howard* case, *supra,* we believe that where the rights of a minority are concerned the courts will protect those rights whether or not they belong to no union or to a union other than a collective bargaining agent where there is no adequate administrative remedy and where a clear statutory right is granted.

We respectfully submit that a decision of this court is necessary to clarify the rights granted to members of unions other than the so called "standard" unions and railroads under the Railway Labor Act.

We believe that the contention of petitioners that they have no administrative remedy is adequately demonstrated by the *Hanson* case, "Appendix A."

WHEREFORE, we respectfully request that the Petition for Writ of Certiorari herein be granted.

Respectfully submitted,

CLIFFORD HOOF,
Counsel for Petitioners.

GERALD D. HILE,
GERALD SHUCKLIN,
Of Counsel for Petitioners.